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No. 99-1169

In the Supreme Court of the United States

NEW PRIME dba PRIME, INC. AND SUCCESS LEASING, INC., PETITIONERS

v.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

DAVID W. OGDEN
Acting Assistant Attorney General

ROBERT S. GREENSPAN
BRUCE G. FORREST
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

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QUESTION PRESENTED

Whether a person who allegedly has been injured by a federally registered motor carrier's violation of the Federal Highway Administration's "Truth-in-Leasing" regulations, 49 C.F.R. Pt. 376, may bring an action in the federal district court against the carrier, without first obtaining an administrative ruling from the agency.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 192 F.3d 778. The opinion of the district court (Pet. App. 18a-23a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 10, 1999. A petition for rehearing was denied on October 13, 1999 (Pet. App. 31a). The petition for a writ of certiorari was filed on January 11, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Motor Carrier Act, the former Interstate Commerce Commission (ICC) was authorized to regulate the leasing arrangements between independent owner-operators and authorized carriers. *American Trucking Ass'ns, Inc.* v. *United States*, 344 U.S. 298 (1953). Following a national strike by independent truck owner-operators in 1973 that seriously interfered with the Nation's commerce, the ICC adopted regulations to establish minimum standards for leasing of independent owner-operators' trucking equipment by authorized interstate motor carriers. *Lease and Interchange of Vehicles*, 131 M.C.C. 141 (I.C.C. 1979); 49 C.F.R. Pt. 376. In general, those regulations leave the terms and conditions of the leasing arrangements to the marketplace, but require that those agreements be reduced to a writing that sets forth basic terms and conditions. Hence they are commonly referred to as the trucking "Truth-in-Leasing" regulations.

Particularly pertinent here, a common feature of those arrangements is an escrow account, maintained by the authorized carrier, "to insure performance and to cover repair expenses, license and permit costs, and any claims that might arise out of carriage of the goods." *Global Van Lines, Inc.* v. *ICC*, 627 F.2d 546, 548 (D.C. Cir. 1980) (citing H.R. Rep. No. 1812, 95th Cong., 2d Sess. 11 (1978)), cert. denied, 449 U.S. 1079 (1981). If the parties choose to utilize such an escrow account, the Truth-in-Leasing regulations require the lease to specify such basic matters as the amount in the fund; the items to which the fund may be applied; the lessor's right to an accounting; and the lessor's right to a refund of any fund balance at the end of the leasing

arrangement within 45 days, with interest. 49 C.F.R. 376.12(k).

2. The ICC was abolished in the ICC Termination Act of 1995, Pub. L. No. 104-88, Tit. I, 109 Stat. 804. Congress did not, in the ICC Termination Act, alter the Truth-in-Leasing regulations regime applicable to the motor carrier industry, but Congress did significantly alter the enforcement mechanisms with the enactment of a private cause of action in 49 U.S.C. 14704, "Rights and remedies of persons injured by carriers or brokers," which provides:

> (a) In General.—
>
> > (1) Enforcement of order.—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.
> >
> > (2) Damages for violations.—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

49 U.S.C. 14704 (Supp. III 1997). Although there had been no requirement for it to do so, the former ICC had adopted the practice of resolving various disputes that

arose under the agency's commercial rules governing the conduct of the motor carrier industry, including owner-operator leasing disputes. When Congress transferred the underlying statutory authority underpinning those rules to the Department of Transportation (DOT), the House Report made clear its intent that the DOT should not continue the ICC's practice of resolving the private disputes:

> The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). The Committee does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties.

Pet. App. 5a-6a (quoting H.R. Rep. No. 311, 104th Cong., 1st Sess. 87-88 (1995) (emphasis omitted)).

3. On August 14, 1997, respondent Owner-Operator Independent Drivers Association, Inc., and several named owner-operators brought a class action suit in the district court against petitioners, alleging that petitioners had violated the Truth-in-Leasing regulations and seeking damages for those violations. Pet. App. 3a-4a, 18a. Petitioners moved to dismiss on grounds of primary jurisdiction, failure to state a claim, and preemption. *Id.* at 20a. The district court granted

the motion on primary jurisdiction grounds. *Id.* at 23a. Although the district court believed it had jurisdiction to adjudicate the owner-operators' complaint, it noted that DOT's Federal Highway Administration (FHWA) had concurrent jurisdiction. *Id.* at 22a. The doctrine of primary jurisdiction was invoked because, in the district court's view, the FHWA's "intimate knowledge of [the Truth-in-Leasing] regulations and the reasoning behind them" placed the agency "in a better position than the Court" to determine the merits of petitioners' contention that the regulations did not control this particular case. *Ibid.* In reaching that decision, the district court did not seek, or obtain, the views of the FHWA.

The owner-operators appealed from that dismissal and, simultaneously, petitioned the FHWA for clarification of its role in this matter. The owner-operators sought an order from the FHWA declaring, *inter alia*, "that applicable law does not confer upon the FHWA primary jurisdiction * * * in private commercial Federal Court litigation arising under 49 U.S.C. § [] 14704, and that such matters should be resolved by the Federal Courts pursuant to the ICC Termination Act." Pet. App. 52a-53a.

On May 29, 1998, the FHWA issued an order stating that the agency had no basis for it to become involved in this private commercial dispute. Pet. App. 24a-30a. The agency agreed with the owner-operators that FHWA's specialized expertise was "generally not needed" in disputes of this nature because the regulations set forth "straightforward, non-technical requirements which a court is ordinarily competent to construe." *Id.* at 29a. Accordingly, "the FHWA will generally decline [to] exercise its primary jurisdiction

with regard to court referrals involving" the Truth-in-Leasing regulations. *Ibid.*

Subsequently, the court of appeals consolidated several petitions for judicial review of the FHWA's declination decision with the owner-operators' appeal from the district court's dismissal of their complaint. Pet. App. 4a-5a. Petitioners and their amicus curiae American Trucking Association argued, *inter alia*, that the district court's judgment should be affirmed on the ground that a private cause of action for damages could not be brought under 49 U.S.C. 14702(a) (Supp. III 1997) because the statute provided for suits by persons alleging injuries arising from a violation of an "order" of the Secretary of Transportation. The court of appeals agreed with petitioners on that point, holding that the term "order" could not be construed to include a violation of an agency regulation. Pet. App. 9a-10a.

The court of appeals, however, did find authority for the district court to entertain those suits under the second sentence of 49 U.S.C. 14704(a)(1) (Supp. III 1997): "A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103." The court stated:

> Though this sentence refers only to violations of the statute, it must also include violations of FHWA's implementing regulations. Because § 14102 contains no mandates or prohibitions but simply authorizes the Secretary to adopt leasing requirements, it would be impossible for a carrier to violate the statute other than by violating rules or regulations promulgated under the statute.

Pet. App. 11a. The court expressly rejected petitioners' argument that the second sentence of Section 14704(a)(1) was limited to actions to enforce agency "orders,"

since that term is found in the first sentence of the Section. The court concluded that the second sentence's "plain language is not limited to violations of agency orders" and that petitioner's approach to the sentence would render it mere surplusage because "a party suing to enforce an agency order is unlikely to need relief beyond enforcement of the order." Pet. App. 12a. The court further noted that its reading of the second sentence was supported by the Conference Report, which expressly indicated that private actions could be brought to enforce the Truth-in-Leasing rules. *Id.* at 12 n.3.

The court of appeals also rejected petitioners' effort to set aside the FHWA's decision not to utilize its enforcement resources in pursuit of the owner-operators' allegations. Pet. App. 15a-16a (citing *Heckler* v. *Chaney*, 470 U.S. 821, 837 (1985) (agency decisions not to institute proceedings are presumptively unreviewable under the Administrative Procedure Act)). Accordingly, the court reversed the district court's dismissal of the owner-operators' lawsuit and denied the petitions seeking review of the agency's declaratory order. Pet. App. 17a.

ARGUMENT

The interlocutory decision of the court below, addressing a jurisdictional issue that is not related to the merits of the underlying dispute, is correct and does not conflict with any other court of appeals decision. Further review therefore is not warranted.

1. The court of appeals correctly observed that, unless the second sentence of 49 U.S.C. 14702(a)(1) (Supp. III 1997) is construed to permit private actions to enforce the provisions of the Truth-in-Leasing regulations, that sentence is rendered surplusage. See Pet.

App. 12a. Moreover, in allowing the owner-operators' private enforcement suit to proceed in the district court, the judgment below is precisely what Congress intended when it added the second sentence during its consideration of the ICC Termination Act. See *ibid.*

Petitioners, however, ask this Court to infer an intent of Congress not to create a private right of action from the lack of a statute of limitations provision applicable to Section 14702(a). Pet. 10-13. That contention is unpersuasive. The omission of a federal statute of limitations, an oversight that is "commonplace in federal statutory law," *Board of Regents* v. *Tomanio*, 446 U.S. 478, 483 (1980), cannot detract from Congress's specific intent to provide that "[a] person may bring a civil action," 49 U.S.C. 14704(a)(1) (Supp. III 1997). When Congress has omitted a statute of limitations in other statutes, the federal courts have applied the analogous state statute of limitations. See, *e.g.*, *North Star Steel Co.* v. *Thomas*, 515 U.S. 29, 33-34 (1995). With respect to civil actions arising under federal statutes enacted after December 1, 1990, such as the instant case, a four-year limitations period applies. See 28 U.S.C. 1658.

2. There is no conflict among the courts of appeals. Petitioners themselves correctly characterize the decision below as involving a matter of "first impression in the courts of appeals." Pet. 2. Their assertion of an intracircuit conflict with *DeBruce Grain, Inc.* v. *Union Pacific Railroad*, 149 F.3d 787 (8th Cir. 1998), is unpersuasive.

As petitioners concede (Pet. 8 n.3), the statutory provisions governing enforcement of the railroad regulations (49 U.S.C. 11701-11707 (1994 & Supp. III 1997)) that were construed in *DeBruce Grain* do not contain language parallel to that added by Congress in the ICC Termination Act of 1995 as the second sentence of 49

U.S.C. 14704(a)(1) (Supp. III 1997). Moreover, petitioners fail to point out that the jurisdictional provision involved in *DeBruce Grain* confers *exclusive* jurisdiction over certain types of railroad matters on the Department of Transportation's Surface Transportation Board. See *DeBruce Grain, Inc.* v. *Union Pac. R.R.*, 983 F. Supp. 1280, 1283 (W.D. Mo. 1997) (construing 49 U.S.C. 10501 (Supp. III 1997)). The corresponding provision addressed by the court below, which deals with disputes concerning the motor carrier industry, does not include that exclusivity language. Cf. 49 U.S.C. 13501 (Supp. III 1997). Thus, the *dictum* in the Eighth Circuit's *DeBruce Grain* decision (quoted at Pet. 7) does not address the issue raised in the instant petition, and, in any event, is not in any way inconsistent with the holding of the court below. And even if there were an intracircuit inconsistency, that would be a matter for the court of appeals, rather than this Court, to resolve. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DAVID W. OGDEN
Acting Assistant Attorney General

ROBERT S. GREENSPAN
BRUCE G. FORREST
Attorneys

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